

CHAPTER NO. 622**SENATE BILL NO. 875****By Ramsey****Substituted for: House Bill No. 1568****By McCord, Briley, Phillip Johnson**

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 3 and Title 70, relative to the Tennessee Off-Highway Motor Vehicle Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 70, is amended by adding Sections 2 through 11 of this act as a new, appropriately designated chapter.

SECTION 2. This chapter shall be known and may be cited as the "Tennessee Off-Highway Vehicle Act".

SECTION 3. The number of off-highway vehicle users in the state is increasing and is growing as a recognized recreational activity while the number of recreational sites is rapidly declining. In the absence of a program to manage off-highway vehicle (OHV) use, a number of consequences are accruing to the state, including environmental damage and loss of economic prospects. Therefore, the general assembly finds the need to manage off-highway vehicles to maximize economic and recreational opportunities, to protect the environment of this state, and to ensure that adequate revenue is generated for such purpose.

SECTION 4. For the purpose of this chapter, unless the context otherwise requires:

(1) "Agency" means the Tennessee Wildlife Resources Agency;

(2) "Commission" means the Tennessee Wildlife Resources Commission;

(3) "Seller" means a person permitted to engage in the business of selling, offering to sell, soliciting or advertising the sale of off-road motorcycles, three or four-wheel all-terrain vehicles and/or dune buggies;

(4) "Director" means the executive director of the Tennessee Wildlife Resources Agency, the director's duly authorized representative, and, in the event of the director's absence or a vacancy in the office of director, the assistant director of the Tennessee Wildlife Resources Agency;

(5) "Off-highway vehicle or OHV" means any off-road motorcycles, three or four-wheel all-terrain vehicles or dune buggies; and

(6) "Owner" means the person in whose name the OHV is owned.

SECTION 5. The director is authorized to:

- (1) Establish and implement an off-highway vehicle program;
- (2) In cooperation with sellers and governmental agencies, develop a voluntary off-highway vehicle education program for existing and potential owners and users;
- (3) Develop guidelines on the proper land selection criteria, trail design and maintenance, and best management practices for all lands used for off-highway user purposes. In this connection, the director is authorized to develop public lands and manage for specific uses on public lands;
- (4) Study, analyze, and document the impacts of off-highway motor vehicles on surrounding habitat, including habitat loss, resource damage, noise, and vehicle emissions;
- (5) Acquire lands, through purchase or lease, for off-highway motor vehicle use. The director is encouraged to use property which is currently owned or leased by the state and which is appropriate for off-highway vehicle use before acquiring lands from private landowners. OHV use shall be expressly prohibited in TWRA wildlife management areas or refuges used solely for hunting, fishing or other TWRA-related activities, state forests, state parks and state natural areas unless such area has been expressly approved for such use on or before the effective date of this act, except that OHV users may be allowed to access such areas if specified by rule and regulation.
- (6) Develop and maintain a list of areas within the state that allow the use of off-highway motor vehicles;
- (7) Enter into partnerships, contracts, and other management agreements with state, federal, and local governments and with private landowners to effectuate the purposes of this chapter;
- (8) Make inspections and investigations, conduct studies and research, or take such other action as may be necessary to carry out the provisions of this chapter, and rules and regulations promulgated pursuant thereto; and
- (9) Exercise general supervision over the administration and enforcement of this chapter and all rules and regulations promulgated thereunder.

SECTION 6. The commission is authorized to promulgate rules and regulations for the following purposes:

- (1) To set, through rules and regulations, rider fees as established in this chapter;
- (2) To establish safety requirements for riders on publicly owned or leased lands. Riders under eighteen (18) years of age shall, at a minimum, wear a helmet.
- (3) To promulgate any other rules and regulations deemed reasonable and necessary to effectuate the purposes of this chapter. Such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 7. (a) The funds received by the Tennessee Wildlife Resources Agency under this chapter shall be used exclusively for the purpose of funding the operation and management of the off-highway motor vehicle program authorized under this chapter. The director may use funds collected under this chapter to acquire by purchase, gift, grant, bequest, devise, or lease, the fee or any lesser interest in land, development right, easement, covenant, or other contractual right necessary to achieve the purposes of this chapter.

(b) It is the intent of the general assembly that the off-highway vehicle program be self-funded. Use of any existing or future agency resources, revenues, or funding not derived by or through the OHV program, to administer or enforce this program shall constitute a diversion of funds under § 70-1-401. Any future federal funds received for OHV or motorized trails shall be credited to the agency for use to administer and enforce the provisions of this chapter.

SECTION 8. (a) A violation of any provision of this chapter is a Class B misdemeanor. A parent or guardian who knowingly permits a minor to operate an off-highway vehicle in violation of this chapter commits a Class B misdemeanor. A person who commits a second or subsequent offense commits a Class B misdemeanor with a mandatory fine of two hundred fifty dollars (\$250).

(b) For any conviction of violation of a provision of this chapter, the court may order restitution for damages caused by the violator, or the court may order the violator to restore the property to a state comparable to its original undamaged state. Any restitution ordered shall be paid to the landowner or to the agency if the land on which the offense occurred was owned, leased, licensed to, or in some manner under agency control. Agency control includes, but is not limited to, control through any type of agreement or understanding with any private or governmental entity permitting land to be used in connection with the OHV program.

(c) In connection with an arrest for a violation of this act, the OHV may be seized and impounded in compliance with Tennessee Code Annotated, § 40-33-101 et. seq.

(d) It is unlawful for any person to ride an off-highway motor vehicle upon the land of another without having first obtained the permission or approval of the owners of the land or of the person or persons in charge of the land who have authority from the owner to give such permission.

(e) The provisions of this chapter are enforceable and may be prosecuted by all law enforcement officers, including police officers, sheriffs, agency officers, and other peace officers charged with the enforcement of the laws of this state. The primary responsibility for the enforcement and prosecution of this chapter on private lands and on lands under local governmental ownership or control is with local law enforcement officers. The primary responsibility for the enforcement and prosecution of this chapter on public lands not under local governmental ownership or control is with state law enforcement officers, including wildlife resources officers. It is not the legislative intent that the agency enforce trespass laws on private property unless the property is under state control.

SECTION 9. Tennessee Code Annotated, Section 70-7-104(2), is amended by deleting the subdivision in its entirety.


SECTION 10. In carrying out the purposes of this act, the Wildlife Resources Commission shall put first and foremost the welfare of wildlife and their environment and shall not degrade nor permit degradation of the commission's purpose and mission to protect and preserve the state's wildlife in accordance with Article XI, Section 13 of the Constitution of Tennessee.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 26, 2004



JOHN S. WILDER
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 10th day of May 2004



PHIL BREDESEN, GOVERNOR